

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

FLOWERS BAKERIES BRANDS LLC :
PLAINTIFF : Case No. 7:12-CR-138 (HL)
v. :
November 24, 2014
EARTHGRAINS BAKING COMPANIES :
LLC., BIMBO BAKERIES USA INC. : Macon, Georgia
DEFENDANTS. :

DISCOVERY HEARING

BEFORE THE HONORABLE HUGH LAWSON
UNITED STATES DISTRICT JUDGE, PRESIDING

APPEARANCES:

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P R O C E E D I N G S

November 24, 2014

THE COURT: I'm sorry, we're late. I am here appearing informally because I had thyroid surgery last Monday. I think my mind is clear. If it's not, you can tell me. My voice is not good. So bear with me. Let's get everybody identified. Mr. Brewster?

MR. BREWSTER: Yes, Your Honor. Bill Brewster from Kilpatrick Townsend. George Lily is here.

THE COURT: Good morning, Mr. Lily.

MR. BREWSTER: And Ms. Chollet and Ms. Genteman, also of our office.

THE COURT: Very good. Thank you. And, Mr. Handelman?

MR. HANDELMAN: Good morning, Your Honor. Jeff Handelman from Brinks, Gilson, and Lione, and with me today is my colleague, Danielle Gillen, and Mr. Bright.

THE COURT: Yes.

MR. HANDELMAN: And Mr. Strickland.

THE COURT: Yes. It's amazing what will induce Mr. Bright out from under his rock in Valdosta. It's good to see all of you, and I hope y'all have a good holiday season. The movant here is the plaintiff; is it not?

MR. BREWSTER: Yes, Your Honor.

1 **THE COURT:** All right. Tell me what your
2 problem is.

3 **MR. BREWSTER:** Your Honor, where should I --

4 **THE COURT:** Anywhere that suits the court
5 reporter will suit me. Where would you rather have him,
6 Sally? Right there.

7 **MR. BREWSTER:** Is this easier?

8 **THE COURT:** Probably, yeah.

9 **MR. BREWSTER:** Good morning, Your Honor. We
10 represent Flowers Bakeries, the makers of Nature's Own
11 Bread, which is the number one selling bread in the
12 United States. In this case the defendant, Bimbo, and
13 its affiliated entities, which is the world's largest
14 baker has launched a Nature's Harvest Bread, and they
15 have done it in certain regions to attempt to preempt our
16 expansion or to compete with us in a way that we allege
17 infringes our federally registered trademark.

18 We have an issue which I haven't faced in 27 years.
19 That is, of the documents that the defendant has produced
20 in this case 8,000 of them, 8,000 of about 30,000
21 documents, have been redacted, not for attorney-client
22 privilege, not for another privilege argument, but words,
23 phrases, sentences, paragraphs, and whole pages have been
24 redacted so as to make many of the documents impossible
25 to understand or incomprehensible. It has been

1 sufficiently extensive that it's interfered with our
2 preparation of the case and our ability to even take
3 depositions without the risk of repeating them.

4 We raised this issue with the defendants in July and
5 viewed it as a very serious issue. We spent the next
6 couple of months trying to work this issue out. Of
7 course, there's a protective order that is already in
8 place with respect to this. We managed in the course of
9 the discussions, not to convince them of our side, but to
10 get them to give us about a dozen random, unredacted
11 documents that, we have suspicions about what's there,
12 show us what you have.

13 When they gave us about a dozen of those, we learned
14 three things. First, that there were elements that were
15 entirely responsive in the documents. For instance, they
16 had redacted out sales information for the product at
17 hand. They had redacted out contacts. Instead of an
18 e-mail that has eight bullet points in it, they have
19 redacted out all of the text and seven of the bullet
20 points and left us with a single bullet point to guess
21 what this e-mail is about and what that context of that
22 bullet point is. We learned the documents were
23 responsive.

24 We secondly learned that there were clearly a need
25 to understand what was going on, either in an e-mail

1 string or a document. They would produce a chart and
2 certain parts of the chart would be redacted so that you
3 couldn't tell what was going on.

4 And thirdly, we learned that there was nothing in
5 the documents, nothing about what was being produced that
6 wasn't going to be protected by the protective order
7 which has designations for confidential, attorneys' eyes
8 only, and outside counsel's eyes only, and designations
9 that would fully protect this information.

10 In early October we reluctantly involved this Court
11 because it is absolutely necessary for us to have these
12 documents. Again, it's about -- we estimate about
13 28 percent of the documents that have been produced in
14 the case have been redacted in some form.

15 The issue has expanded as well because
16 notwithstanding the fact that the scheduling orders in
17 this case say that each party will produce to the other
18 one the native file if that's requested, and there are
19 some documents in this case that are 14,000 pages, and in
20 order to work with them you would need to have the native
21 file.

22 They have said that they are not producing native
23 files, notwithstanding the scheduling work, because they
24 can't figure how to redact those. As a result we're here
25 missing a substantial part of what should have been

1 produced months ago, much less now.

2 There is extensive case law with respect to this
3 issue. The -- it's hard to describe sort of leading
4 cases, but certainly the majority of the opinions are
5 that redaction is inappropriate, particularly when it's
6 for an issue like only relevance, which is what the main
7 assertion is. It's, we're producing you that e-mail with
8 those seven bullet points, but one of them is about
9 Nature's Harvest and one of them is about one of our
10 other breads.

11 Well, the fact that it's about another product
12 doesn't make it irrelevant to the case. First, you need
13 it to understand the context. In addition, the issues in
14 this case that relate to likelihood of confusion involve
15 things like channels of trade, how customers react,
16 advertising, intent, and all of those issues are going to
17 be demonstrated in these kinds of documents, but you need
18 to see the context in order to be able to see those.

19 In one such case, Bartholomew v. Avalon Capital
20 Group, which is in our letter to the Court, 278 F.R.D.
21 441, the court said: Redaction -- and I'm reading this
22 in part because it's an incredibly short summary of our
23 argument.

24 (Reading): Redaction is an inappropriate tool for
25 excluding alleged irrelevant information from documents

1 that are otherwise responsive to discovery requests. It
2 is a rare document that contains only relevant
3 information, and irrelevant information within a document
4 that contains relevant information may be highly useful
5 to providing context for the relevant information.

6 Federal Rule 34 concerns the discovery of documents.
7 It does not concern discovery of individual pictures,
8 graphics, paragraphs, sentences, or words within those
9 documents. Thus the court views documents as relevant or
10 irrelevant, courts do not as a matter of practice waive
11 the relevance of particular pictures, graphics,
12 paragraphs, sentences or words, et cetera.

13 This is the only interpretation of Federal Rule 34
14 that yields just, speedy, and inexpensive determination
15 of every action and proceeding. The interpretation is
16 buttressed by the fact that the rules do not grant
17 parties the power to unilaterally redact information on
18 the basis of relevance.

19 The Federal Rules of Civil Procedure explicitly
20 provide when a redaction may be used, and it cites to
21 Rule 5.2. The Federal Rules of Civil Procedure also
22 explicitly provide a method for a party to object to a
23 request for production of documents. This method does
24 not include explicitly the option of producing redacted
25 documents. In addition, the rules also provide parties

1 with the option of bringing a motion for a protective
2 order, which, of course, they did not do in this case.

3 It's a nice summary of what the issues are. Their
4 objections are essentially twofold. Relevance, when
5 we're at the very beginning of production of documents,
6 much less what's going to be used in the case, and that
7 the information is sensitive.

8 The Court has entered a protective order in the
9 case. The parties are well aware of what obligations
10 that order brings to them, and there is no suggestion
11 that there would be any issue between the counsel for
12 parties in this case with respect to that information.

13 *Orion Power*, which is also cited in the letter:
14 Defendants' novel interpretation of their discovery
15 obligations is not supported by Rule 34 and would open a
16 fertile new field for discovery battles.

17 Rule 34 talks about production of documents as
18 opposed to the relevant information contained in those
19 documents. It is at least implicit the duty to produce
20 documents that they are kept in the usual course of
21 business includes the substantive content of those
22 documents.

23 **THE COURT:** These readings are not helpful.

24 **MR. BREWSTER:** So, Your Honor, the arguments
25 here, the terms that the party compete, the protective

1 order is in place, and additionally those concerns are a
2 two-way street. We've produced our documents equally
3 competitive in an unredacted form. There isn't any
4 reason to believe -- we don't have any doubts that
5 counsel is handling those appropriately. There oughtn't
6 be any doubts that we would be doing the same.

7 The cases that they cite fall into one of three
8 categories. The first category are cases that are both
9 ERISA cases, and they both involve classes, and the issue
10 is whether if a class is trying to litigate about one
11 plan, one benefit plan, whether it's okay to redact
12 information about other unrelated plans.

13 And in a couple of cases in ERISA context involving
14 plans, the courts have said that they could. In part
15 because they're looking at a handful of documents and the
16 court is able to even in camera inspect the document, for
17 instance, the minutes of a board meeting and say, that's
18 fine, you don't need to produce that, but not dealing
19 with any volume of documents.

20 The second category is two situations involving
21 civil rights actions where the parties were seeking
22 personal information, and the court said personal
23 information about protesters or an interview could be
24 redacted.

25 And, finally, there's a personal injury case where

1 the plaintiff was seeking information from a parts
2 manufacturer that was completely unrelated.

3 Outside of those contexts, there are no cases that
4 say that when you're producing documents to the other
5 side you can redact out the content of those e-mails,
6 PowerPoint presentations, or other materials.

7 We attached four examples to the letter that
8 included what had been redacted and then these were four
9 of the 12 among the 8,000 that they had provided to us.

10 In the first of those, the redactions are, as I
11 described, all but a single bullet point. It's
12 impossible to understand what's going on in the e-mail or
13 in what context this bullet point would be understood.

14 The second, they redacted all of the content of an
15 Excel spreadsheet except for the category headings, and
16 what's contained in the unredacted version is sales
17 information, pricing information, and others that would
18 be relevant including to damages.

19 The third, in every store in the bread isle the
20 stores have a layout where they believe that the bread
21 should be, and so Nature's Own should be here, and
22 Nature's Harvest should be here.

23 In this particular layout or proposal that they
24 made, they redacted out all of the other breads except
25 for Nature's Own and Nature's Harvest. Don't understand

1 where the other Flowers products might be, where the
2 defendant's other products might be, where the store
3 brands might be. Everything has been redacted out of
4 this document so as to make it of no value.

5 And, finally, the last is another e-mail. It says:
6 Thanks, Dan, don't give them an inch. And redacted out
7 are the other data points other than the reference to
8 Nature's Own.

9 Your Honor, these are four examples because we asked
10 for 12 random, and we came up with four situations in
11 which this not only wasn't irrelevant, it was clearly
12 relevant and central to understanding what the context
13 would be.

14 Again, this isn't, putting privilege aside, a
15 situation that I have encountered. There's no question
16 that there's a protective order in place. Some of the
17 cases say if there's not a protective order, you may to
18 do this. But this is a situation where we clearly need
19 unredacted versions of these documents, and they should
20 be produced so that we can proceed with the depositions
21 that the defendants have been postponing while it held
22 out this issue of deciding these redactions.

23 We've now been pushed very late, the parties
24 continue to fall over each other. We've given -- made
25 our witnesses available. The depositions of our

1 witnesses are going to be complete in the next few weeks.
2 They decline to give us dates for their witnesses until
3 this type of issue is resolved, and now we've got the
4 dates in December, but we don't yet have documents. And
5 we're not going to be able review 8,000 documents and
6 have them fully processed and ready to go by the time
7 that is set.

8 It's clear the Court should give them a specific
9 date to produce unredacted versions of all of these
10 documents and give us sufficient time in order to be able
11 to then review them, complete our depositions of their
12 parties so we can proceed orderly with this case. We
13 would very much like to do so. Thank you, Your Honor.

14 **THE COURT:** Thank you. Mr. Handelman, explain
15 to me why this problem can't be handled within the
16 parameters of the confidentiality agreement?

17 **MR. HANDELMAN:** Well, Your Honor, our concern
18 is this. These documents, as counsel indicated,
19 typically will cover the umbrella of memos, PowerPoints
20 that cover not only the Nature's Harvest brand, but also
21 other brands that Bimbo sells that compete directly with
22 Flowers. And so our concern is that when plaintiff
23 submits a document, for example, on a motion with this
24 court or during the trial, if these documents are not
25 redacted to protect the sensitive information about

1 brands that have nothing to do with this case, that
2 information will come in on motion, at trial and become
3 -- unless the record is sealed become part of the public
4 record along with the Nature's Harvest information.
5 Likewise, should the case go up on appeal, we're all
6 aware of the Eleventh Circuit policy, which is in favor
7 of making court records available to the public.

8 So the protective order does not address the
9 concern, which is namely that, unless this information
10 about non-relevant products that compete with other
11 brands of Flowers that has information about marketing
12 strategy, pricing, and sales, all of this highly
13 sensitive information, unless that information is
14 redacted, then when Flowers submits a PowerPoint about
15 Nature's Harvest, if it's not redacted, all of the other
16 information about, for example, Sara Lee Bread, muffins,
17 the Earthgrain muffins, and the list goes on with respect
18 to other unrelated, irrelevant brands that have nothing
19 to do with this case. We've got sales information,
20 marketing information, and so on that would come in. So
21 if I could back up and sort of highlight the background
22 and give this dispute some context, Your Honor.

23 **THE COURT:** Well, wait a minute, before you
24 give me all that context. Of course, it goes without
25 saying that your official posture in this case is that

1 the plaintiff's complaint is without merit, and I
2 understand that. But just for purposes of discussion,
3 let's assume that there is at least a justiciable
4 controversy here, and there is a legal problem that needs
5 to be resolved, and that looking at the case in that
6 light -- and that does not imply in any sense that the
7 plaintiff should prevail. But assuming that there is a
8 problem here -- and if there's not a problem here
9 somebody is spending a God awful lot of money to send
10 lawyers to talk to me. If there's a problem here, then
11 how do you suggest we resolve this? You just say, we're
12 going to redact all of this and you can't have it. My
13 view has always been let's all put all the stuff on the
14 table and see what we're dealing with. How am I suppose
15 to deal with this if I adopt your position as face value?
16 I mean, what's your answer to all of that?

17 **MR. HANDELMAN:** Well, twofold, Your Honor. For
18 example, what we are dealing -- and we have some examples
19 that might illustrate the point. You've got a PowerPoint
20 that has sensitive pricing information, marketing
21 strategy information, about one page, you'll have the
22 Nature's Harvest, which is the brand at issue, but the
23 next page will be about Thomas English Muffins, an
24 irrelevant brand that competes directly with some of the
25 plaintiff's products.

1 **THE COURT:** Well, you say it's real sensitive.
2 It may be; it may not.

3 **MR. HANDELMAN:** Well -- and so Your Honor --

4 **THE COURT:** To you everything is sensitive.

5 **MR. HANDELMAN:** Well, when you look at the
6 other cases that have looked at redactions in this
7 context -- now, counsel for plaintiff recited from a few
8 cases. Let me just show you the balance of that very
9 briefly. Here's a case: Although not specifically
10 addressed in Rule 26 of Federal Rules of Civil Procedure,
11 other courts have found redaction appropriate where the
12 information redacted was not relevant to the issues in
13 the case.

14 **THE COURT:** Who's going to decide that? How
15 are we going to decide that if we don't know what it is?

16 **MR. HANDELMAN:** Well, we could --

17 **THE COURT:** Are you going to help me with that?
18 Are you going to decide what's relevant?

19 **MR. HANDELMAN:** Well, what we -- we've done our
20 best efforts to redact information about non-relevant
21 products that have not been --

22 **THE COURT:** So you say, but nobody has seen it
23 but you?

24 **MR. HANDELMAN:** That's correct, Your Honor.

25 **THE COURT:** That's what bothers me. What am I

1 suppose to do with that? You say, well, he said it; so
2 it must be so.

3 **MR. HANDELMAN:** Well --

4 **THE COURT:** Well?

5 **MR. HANDELMAN:** But, Your Honor, parties make
6 calls about relevance in discovery as a matter of course.
7 In other words --

8 **THE COURT:** They don't do it here. It's the
9 Court that does it here.

10 **MR. HANDELMAN:** Well, I mean, perhaps we could
11 come up with a mechanism by which a third party could
12 confirm. What happened here was we said --

13 **THE COURT:** I asked you a while ago, how are we
14 going to solve this problem?

15 **MR. HANDELMAN:** Well --

16 **THE COURT:** Well?

17 **MR. HANDELMAN:** What we did here is the
18 plaintiff asked for -- we said if you want to take a look
19 at any documents that have been redacted, let us know,
20 give me the Bates numbers, we'll provide unredacted
21 copies to you on an outside counsel only basis. They
22 gave us a list of Bates numbers. We provided them with
23 the unredacted versions of those documents.

24 **THE COURT:** So you've seen all of those?

25 **MR. BREWSTER:** No, Your Honor. Those are just

1 the 12 where we said give us some so we could see --

2 **THE COURT:** 12 documents. 12 out of 8,000?

3 **MR. BREWSTER:** 12 out of 8,000, Your Honor.

4 **THE COURT:** Go ahead.

5 **MR. HANDELMAN:** Well, Your Honor, if we wanted
6 to set up, for example, a system where an independent
7 third party could look at these redactions to confirm
8 whether or not they are irrelevant, you know, we could
9 discuss setting that up, but what we've done is in making
10 the determination as to what should be produced we've --
11 they've asked for everything having to do with Nature's
12 Harvest. We've given them everything having to do with
13 Nature's Harvest. What we haven't give them is
14 information pertaining to other brands that compete with
15 those of the plaintiff.

16 And, as the cases have found, there are a number of
17 cases that have approved of redactions of irrelevant
18 material, especially where the plaintiff and defendant
19 are competitors. So under that authority we've produced
20 everything -- everything having to do with Nature's
21 Harvest has been produced. If it has to do with Thomas's
22 English Muffins, we haven't produced it. It's not
23 relevant and it's sensitive, and that's the approach that
24 we have taken, Your Honor.

25 **THE COURT:** Do you remember the story of

1 Alexander the Great and the Gordian Knot?

2 **MR. HANDELMAN:** No, Your Honor.

3 **THE COURT:** Come on. Somewhere when Alexander
4 was moving through the Middle East on the way to India in
5 some country in the Near East, there was a famous knot
6 that nobody could untie, like one of these pulleys you
7 see in a catalog, and it was brought to Alexander's
8 attention, and it was pointed out that no one had ever
9 been able to untie this knot. Surely y'all know this.
10 And Alexander looked at the knot, drew his sword, sliced
11 the knot, and went on and conquered the world.

12 This is a Gordian knot. I've got a sword. I'm
13 going to slice that knot unless you all figure out a way
14 to resolve this problem. Do you want to talk about it?

15 **MR. BREWSTER:** Your Honor, if I might, I
16 believe that the protective order provides the solution
17 already, which is, the documents are to be produced in
18 unredacted form, and then if there's going to be a
19 filing, we are to give them notice of highly confidential
20 or attorneys' eyes only documents with the ability to try
21 to reduce what's even included or how it's cited, or they
22 -- giving them the opportunity to move to redact at that
23 point in time. The presumption is that the information
24 is relevant and included, but, Your Honor, we're not --
25 this isn't a side show for us. We're not benefited by

1 fighting with them about whether we can file a brief or
2 an enclosure. We'd be willing to take it up at that
3 point in time, so that this -- they're concerned about
4 trial or appeal. We're in early discovery.

5 **THE COURT:** Listen, what I'm suggesting is that
6 y'all are here in Macon right this minute. We've got
7 this problem. Either y'all work it out or I'm going to
8 work it out. If you have any concerns that you want
9 protected, looks like to me it would be better for you to
10 try to work it out yourselves rather than have me do it
11 with a single slash. Do you think discussing it would be
12 profitable?

13 **MR. HANDELMAN:** I do, Your Honor.

14 **THE COURT:** What do you think?

15 **MR. BREWSTER:** It always is, Your Honor.

16 **THE COURT:** I'm going to be in here. You're
17 going to be in here. When y'all have resolved this
18 problem, let me know.

19 **MR. HANDELMAN:** Thank you, Your Honor.

20 **(RECONVENED; ALL PARTIES PRESENT, 11:30 a.m.)**

21 **THE COURT:** Mr. Brewster?

22 **MR. BREWSTER:** Yes, sir. I am please to say
23 that we have developed a solution.

24 **THE COURT:** Good.

25 **MR. BREWSTER:** And it, in brief, sounds like

1 this and then there's some language that has been hashed
2 out. But, in brief, the defendants will produce the
3 documents. Mr. Handelman has indicated that they likely
4 could do that in about a week, taking into account
5 Thanksgiving, so it may be a little longer, but by some
6 point next week they expect that they could have produced
7 the documents that are at issue.

8 **THE COURT:** Well, let's drive a peg. Let's fix
9 a date, a time and date.

10 **MR. BREWSTER:** Okay. You guys pick a date.

11 *(Pause, Aside)*

12 **MR. BREWSTER:** So the defendants will produce
13 unredacted documents by December 5th. We have adopted a
14 procedure that will hopefully alleviate the defendant's
15 concerns about how this might show up down the road, and
16 essentially what this would be is, the current protective
17 order says if we're going to use one of their documents,
18 we'll give them 14 days notice that we're going to use
19 it. What we're going to suggest adding to the procedure
20 is that at that point instead of just having to file a
21 motion to seal, we want to avoid that, they can propose
22 back a redacted version, and we'll try to work that out
23 in that time frame before anybody would have to file any
24 motion to seal. So if we're using a ten-page document
25 and they're concerned about some of it, we'll come up as

1 best we can with an agreement that will redact that
2 document so nobody will need to file a motion to seal.
3 We'll try to avoid having those types of motions as a
4 matter of course.

5 **THE COURT:** Well, let's stop right there. That
6 does not sound like an agreement. You are talking about
7 things you're going to try to do.

8 **MR. BREWSTER:** No, what -- we will agree -- and
9 we've got the language, and we will agree that they will
10 propose redacted versions --

11 **THE COURT:** Well, what is the language? Let's
12 put it in the record.

13 **MR. BREWSTER:** Okay. We've got a whole bunch
14 of language. I was just going to try to describe it
15 generally.

16 **THE COURT:** Well, I mean, what I want is for
17 you to nail it all down.

18 **MR. BREWSTER:** We've got it nailed down.

19 **THE COURT:** That's good.

20 **MR. BREWSTER:** We've got it nailed down.

21 **THE COURT:** Well, share it with me.

22 **MR. HANDELMAN:** Okay.

23 **MS. GILLEN:** So, Your Honor, this is Danielle
24 Gillen, again.

25 **THE COURT:** Yes, ma'am.

1 **MS. GILLEN:** Paragraph six of the protective
2 order, how it currently reads, if you would like me to --
3 I'll go through the language.

4 **THE COURT:** You do what you need to do.

5 **MS. GILLEN:** Okay. So, it's says: If a party
6 seeks to rely on documents, testimony, or other materials
7 produced by the other side, the producing party, under a
8 confidential attorneys' eyes only or outside attorneys'
9 eyes only designation in support of any motion or during
10 any hearing or trial, the party must notify the producing
11 party at least 14 days prior to filing the motion,
12 hearing, or trial.

13 If the producing party objects to the public
14 disclosure of information, A, it shall propose a redacted
15 version of the information, and the parties shall work in
16 good faith to agree on a mutually acceptable redacted
17 version; and, B, it must state its objection within seven
18 days and immediately file a motion with the Court stating
19 a compelling reason for allowing the materials to be
20 filed under seal, in quotes, Motion to File Under Seal.

21 And then the language keeps -- it says that: If a
22 party seeks to rely on documents, testimony, or other
23 materials produced by the producing party under a
24 confidential attorneys' eyes only or outside attorneys'
25 eyes only designation in opposition to any motion or

1 reply to any opposition and the documents, testimony, or
2 materials have not otherwise been identified in a motion
3 to file under seal, the party must notify the producing
4 party at least ten business days prior to filing said
5 opposition or reply.

6 If the producing party objects to the public
7 disclosure of information, we included the same clause as
8 before: A, it shall produce it -- excuse me -- it shall
9 propose a redacted version of the information and the
10 parties shall work in faith to agree on a mutually
11 acceptable redacted version; and, B -- and this language
12 remains -- it must state its objection within seven
13 business days and immediately file a motion with the
14 court stating a compelling reason for allowing the
15 materials to be filed under seal. The parties agree to
16 work in good faith to prevent the disclosure of material
17 marked as confidential attorneys' eyes only or outside
18 attorneys' eyes only until the Court issues an order on
19 the motion to file under seal.

20 And then, Your Honor, the parties agree that
21 paragraph six only permits when the situation arises if,
22 for example, the plaintiff relies on defendant's
23 documents, then there would be an objection and a motion
24 to seal. However, we also agreed on a separate
25 provision, for example, if defendants rely on their own

1 documents, the same sort of mechanism applies. So it's a
2 reworking -- it would be a second paragraph under six.
3 And if Your Honor would like, I can read that into the
4 record as well.

5 **THE COURT:** Whatever it takes.

6 **MS. GILLEN:** Thank you. If a party seeks to
7 rely on documents, testimony, or other materials that it
8 produced under a confidential attorneys' eyes only, or
9 outside attorneys' eyes only designation in support of
10 any motion or during any hearing or trial, the party may
11 notify the receiving party at least 14 days prior to
12 filing the motion, hearing, or trial. The producing
13 party, A, may propose a redacted version of the
14 information, and the parties shall work in good faith to
15 agree on a mutually acceptable redacted version; and, B,
16 may file a motion within seven business days with the
17 Court stating a compelling reason for allowing the
18 materials to be filed under seal.

19 If a party seeks to rely on documents, testimony, or
20 other materials that it produced under a confidential
21 attorneys' eyes only or outside attorneys' eyes only
22 designation in opposition to any motion or in reply to
23 any opposition and the documents, testimony, or materials
24 have not otherwise been identified in a motion to file
25 under seal, the party may notify the receiving party at

1 least ten business days prior to filing said oppositional
2 reply.

3 The producing party, A, may propose a redacted
4 version of the information and the parties shall work in
5 good faith to agree on a mutually acceptable redacted
6 version; and, B, may file a motion within seven business
7 days with the court stating a compelling reason for
8 allowing the materials to be filed under seal.

9 The parties agree to work in good faith to prevent
10 the disclosure of material marked confidential attorneys'
11 eyes only, or outside attorneys' eyes only until the
12 Court issues an order on the motion to file under seal.

13 **THE COURT:** Is that your agreement?

14 **MR. BREWSTER:** Yes, it is, your honor.

15 **MR. HANDELMAN:** Yes, it is, your honor.

16 **THE COURT:** Okay. Is there any other matter
17 that requires resolution here today?

18 **MR. BREWSTER:** There is, Your Honor, and the
19 parties have also agreed to that.

20 **THE COURT:** What is that?

21 **MR. BREWSTER:** Which is, if now -- we had
22 talked about a week, but if they're going to produce
23 their documents by December 5th, we're going to need some
24 time to review those documents and then we're going to
25 need some time to take the depositions that are going to

1 be taken, we would need an extension of the discovery
2 period and deadlines.

3 Discovery is currently set to close around
4 December 24th. We would like to, and counsel has agreed,
5 to push that out about 45 days because of the holidays.
6 If we could have the discovery period end on
7 February 13th now, we would be able to get everything
8 done, and then the deadlines would follow out from that.

9 **THE COURT:** How many depositions?

10 **MR. BREWSTER:** The parties are each taking
11 approximately ten depositions and then there have been
12 two third-party depositions so far, and there are going
13 to be some others of those as well. We're waiting on
14 some documents to do some more of those. So there may be
15 -- each side may have five or six third-party depositions
16 in addition to the ten that each side is taking.

17 **THE COURT:** And that will conclude discovery?

18 **MR. BREWSTER:** That'll conclude the fact
19 discovery, Your Honor, and the way this deadline works
20 there's a period for expert reports that follows that.

21 **THE COURT:** Yes. Okay. Is that your
22 agreement?

23 **MR. HANDELMAN:** Yes, Your Honor.

24 **THE COURT:** All right. I will extend it out to
25 February 13th.

1 **MR. BREWSTER:** Thank you, Your Honor.

2 THE COURT: What else?

3 | **MR. HANDELMAN:** I believe that covers it.

4 **MR. BREWSTER:** I think that does, Your Honor.

5 | Thank you.

6 **THE COURT:** I've learned that my letters are
7 not routinely read, but you may recall that at the
8 beginning of this case I wrote counsel and told you that
9 if you had any problems, particularly discovery problems
10 to pick up the phone and call me. I remind you of that
11 letter, and I invite your call if you have a problem. We
12 don't need any more of this, and we need to move the case
13 along. Any question?

14 MR. HANDELMAN: Very well, Your Honor.

15 **THE COURT:** And I wish you -- you know, don't
16 wait until the last day and say discovery is about expire
17 and midnight and we got 30 thousand pages of stuff we
18 want you to read because I ain't going to read it.

19 Okay. Well, I thank you for coming. I hope all of
20 you have a good holiday. Converse, I know your being
21 here made all the difference. Good to see all of you.
22 Take care.

23 _____

24 CERTIFICATE OF OFFICIAL REPORTER

25 I, Sally L. Gray, Federal Official Court Reporter,

1 in and for the United States District Court for the
2 Middle District of Georgia, do hereby certify that
3 pursuant to Section 753, Title 28, United States Code
4 that the foregoing is a true and correct transcript of
5 the stenographically reported proceedings held in the
6 above-entitled matter and that the transcript page format
7 is in conformance with the regulations of the Judicial
8 Conference of the United States this 31st DAY OF MAY,
9 2015.

10 /s/ SALLY L. GRAY
11 SALLY L. GRAY, CCR, RPR
12 FEDERAL OFFICIAL COURT REPORTER
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